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S. 174 TESTIMONY BEFORE SENATE JUDICIARY SUBCOMMITTEE

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A recent federal district court ruling in *Citizens for Responsibility and Ethics (CREW) v. the Federal Election Commission (FEC) and Crossroads GPS* summarizes the importance of financial disclosures to the integrity of our elections. "Campaign finance law has long recognized the value of disclosure as a means of enabling the electorate to make informed decisions about candidates, to evaluate political messaging, to deter actual, or the appearance of, corruption, and to aid in enforcement of the ban on foreign contributions, which may result in undue influence on American politicians." This statement does not exaggerate the importance of disclosures and the League regards this as one of the more important issues that comes before the General Assembly.

The bill before this subcommittee is essential to the right of citizens of South Carolina to know who is attempting to influence our votes, to "consider the source" as we all know we should when considering attempts to influence us. The provisions of this bill do not intrude on the free speech rights of donors, an opinion that is not ours alone but is shared by federal district courts and the Supreme Court of the United States.

S. 174 addresses what has been a contentious area in campaign finance law, disclosures related to electioneering by 501(c)4 groups not explicitly established for that purpose. Until very recently this bill might have been found in conflict with federal case law. Cases including *Citizens United* and *Buckley v. Valeo* have been interpreted to make electioneering disclosure requirements so narrow in the case of "social welfare" groups that they were scarcely worth enacting. We are very pleased that this is no longer the case.

The earlier federal interpretation was embodied in the FEC's 11 C.F.R. § 109.10(e)(6) regulation, which required disclosure only of donors who explicitly donate funds to support a specific electioneering action. Given that interpretation, disclosure requirements were easily evaded by simply not stating an intended use for a donation. However, the United States District Court for the District of Columbia has now recognized in *CREW v. FEC and Crossroads GPS* that this narrow standard is unacceptable, is not necessary to preserve the constitutional right of free speech and does not serve the public interest. The Supreme Court in September 2018 refused to hear appeal of this ruling, effectively concurring with the district court in leaving it in place.

In S. 174, "election communications" that bring an independent expenditure committee under the requirements of the law are defined as paid communications that reach a total of at least \$500 during an election cycle. S. 174 also requires important expenditure disclosures from the covered committees, information that helps to establish and communicate to the public not just the justification for requiring disclosure of donors, but the nature of the advocacy undertaken.

Third party expenditures now outweigh the influence of more accountable direct contributions to campaigns. Within a week of the SCOTUS response to *CREW v. FEC and Crossroads GPS*, Issue One reported that four

The League of Women Voters, a nonpartisan political organization, encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. Membership in the League is open to men and women of all ages. 1

organizations pumped at least \$357 million into elections between 2010 and 2016. Those organizations were Crossroads GPS, the Koch network's Americans for Prosperity, the U. S. Chamber of Commerce and the National Rifle Association.

In South Carolina, respected and honorable candidates with a long record of service to our state have suffered from substantial dark money attacks and have even lost their seats as a consequence. Surely this massive infusion of money into our politics demands accountability. The League asks that you forward this bill with a favorable recommendation.

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